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Supreme Court No. 98173-6
Court of Appeals No. 78839-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ERIC HERNANDEZ-NAVARRO,

Petitioner.

PETITION FOR REVIEW

Gregory C. Link
Washington Appellate Project
1511 Third Avenue
Suite 610
Seattle, Washington 98101
(206) 587-2711

Kathleen A. Shea
Luminata, PLLC
2033 Sixth Avenue
Suite 901
Seattle, Washington 98121
(206) 552-9234

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A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Eric Hernandez-Navarro requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division One, in *State v. Eric Hernandez-Navarro*, No. 78839-6, filed January 13, 2020. A copy of the opinion is attached in an appendix.

B. ISSUES PRESENTED FOR REVIEW

1. A court's authority to impose restitution is derived entirely from statute, the plain language of which requires the State prove a causal connection between the loss and the crime of conviction, regardless of any determinations made by the Crime Victims Compensation Program (CVCP). Where the State declined to prove the causal connection between payments made for "pension benefits" and "time loss" and the criminal convictions, and the trial court wrongly found it had no obligation to find causation because the request for restitution came from the CVCP, should this Court grant review?

2. Under RCW 9.94A.753(3), restitution is statutorily permitted for "easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury." Where the State presented only a payment history of "pension benefits" by the CVCP, with no additional information, should

this Court grant review because the State failed to prove the “pension benefits” were easily ascertainable or qualified as lost property or wages?

3. The Due Process Clause of the Fourteenth Amendment and Article I, section 3 require that an award of restitution be supported by substantial credible evidence, which requires the court not rely on speculation or conjecture. Where the documentation provided in support of the “pension benefits” and “time loss” was inconsistent and largely unexplained, should this Court grant review because the trial court was required to speculate as to why these payments were made by the CVCP and how the payments were calculated?

C. STATEMENT OF THE CASE

Eric Hernandez-Navarro sped through a red light and slammed into another vehicle at a high speed, killing Leimoi Clark and severely injuring Ms. Clark’s¹ daughter, Emily Tilfas. CP 34. Mr. Hernandez-Navarro took responsibility for his actions, pleading guilty to vehicular homicide, vehicular assault, possessing a stolen vehicle, felony hit and run, and unlawful possession of a firearm in the second degree. CP 34; RP 6. Mr. Hernandez-Navarro agreed to an exceptional sentence and the State’s

¹ Throughout the briefing, “Ms. Clark” refers to the victim, Leimoi Clark. Any other individuals with this last name will be referred to by their full name for purposes of clarity.

recommendation of 310 months, or almost 26 years, in prison. CP 35-36; RP 6, 10.

At sentencing, Mr. Hernandez-Navarro expressed great remorse for his actions, telling the court he deeply regretted the choices he made that day and he carried “a lot of shame” for what he had done. RP 54. The court accepted the joint recommendation. CP 50.

Mr. Hernandez-Navarro also agreed to pay restitution, in an amount to be determined after his sentencing. CP 49. The State requested a total of \$50,390.39. CP 59. Mr. Hernandez-Navarro did not object to restitution for burial costs, supported by a receipt and totaling \$18,168.87. CP 66, 72. He also did not object to restitution in the amount of \$7,217.25 for the vehicle totaled in the collision. CP 72. This number was supported by documents showing the car’s value, as assessed by Kelley Blue Book, and the costs incurred by the towing company. CP 70-71.

However, Mr. Hernandez-Navarro objected to the remaining amount of restitution. As the State conceded, \$5,750 in burial costs was counted twice in the State’s total calculation. RP 77; CP 75. This error was not included in the court’s order. CP 96. Two amounts remained in dispute: \$16,192.24 in “pension benefits” and \$3,062.03 in “time loss.” CP 63-64, 68-69.

These alleged “losses” were money paid by the CVCP to two individuals. CP 63-64, 67-69. Avery Tilfas received pension benefits and time loss payments. CP 63-64, 67-69. Ribon Clark received pension benefits. CP 63-64. The documentation provided by the State did not explain Avery Tilfas’s relationship to Leimoi Clark or Emily Tilfas, and simply stated the CVCP had identified Ribon Clark as one of Leimoi Clark’s four children. CP 62.

Mr. Hernandez-Navarro explained restitution for pension benefits and time loss was improper given the limited information provided and the State’s failure to establish a sufficient nexus to Mr. Hernandez-Navarro’s crimes. RP 74. He further explained the pension benefits were outside the scope of what is permitted for an award of criminal restitution. CP 76.

The trial court rejected these arguments, finding the CVCP was entitled by statute to receive restitution for whatever payments it elected to issue, and the CVCP had provided sufficient documentation to show it had made the payments it alleged. RP 75, 78. The court imposed a total of \$44,640.39. CP 96. The court also indicated the State could request additional restitution in the future as additional pension benefits were processed by the CVCP. CP 97. The Court of Appeals affirmed. Slip Op. at 6.

D. ARGUMENT IN FAVOR OF GRANTING REVIEW

This Court should grant review because the trial court acted without statutory authority and in the absence of substantial evidence when it ordered Mr. Hernandez-Navarro to pay restitution.

- a. Restitution may be ordered only where the loss is causally connected to the crime charged, easily ascertainable, and supported by substantial credible evidence.

“A court’s authority to impose restitution is derived entirely from statute.” *State v. Romish*, 7 Wn. App. 2d 510, 514, 434 P.3d 546 (2019) (citing *State v. Griffith*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008)). The imposition of restitution following a conviction on criminal charges is governed by the Sentencing Reform Act (SRA). *See* RCW 9.94A.753. This statute requires restitution be ordered when the criminal offense results “in injury to any person or damage to or loss of property.” RCW 9.94A.753(5). Restitution is permitted only for losses that are “causally connected to the crime charged.” *Griffith*, 164 Wn.2d at 965; *see also State v. Enstone*, 17 Wn.2d 675, 680, 974 P.2d 828 (1999). Indeed, “[t]he law of restitutions relies on causation.” *Romish*, 7 Wn. App. 2d at 515.

Evidence presented at restitution hearings must meet due process requirements. *State v. Kisor*, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993); U.S. Const. amend. XIV; Const. art. I, § 3. The amount of restitution imposed must be based on “easily ascertainable damages.”

RCW 9.94A.753(3); *State v. Hughes*, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), *overruled on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). “While the claimed loss ‘need not be established with specific accuracy,’ it must be supported by ‘substantial credible evidence.’” *State v. Deskins*, 180 Wn.2d 68, 82, 322 P.3d 780 (2014). Evidence is only sufficient if it provides the trier of fact with a reasonable basis for estimating the loss and requires no speculation or conjecture. *Id.* at 82-83. When the amount of restitution is in dispute, the State has the burden of proving the award by a preponderance of the evidence. *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005).

Unlike a civil judgment, an order of restitution becomes “part of an offender’s sentence.” *Hughes*, 154 Wn.2d at 155 (quoting *State v. Edelman*, 97 Wn. App. 161, 166, 984 P.2d 421 (1999)). It is incorporated into the criminal judgment and sentence and permits the court to exercise jurisdiction over the individual until the restitution amount is fully satisfied, regardless of the statutory maximum for the crime committed. RCW 9.94A.753(4). In addition, an individual who has suffered a loss as a result of the defendant’s actions remains free to seek all available civil remedies. RCW 9.94A.753(9).

This Court reviews, *de novo*, whether the type of restitution ordered by the trial was authorized by statute. *Romish*, 7 Wn. App. 2d at

515; *see also State v. Tobin*, 161 Wn.2d 517, 523-24, 166 P.3d 1167 (2007); *State v. Acevedo*, 159 Wn. App. 221, 229-30, 248 P.3d 526 (2010).

The trial court's underlying factual findings are reviewed for substantial evidence. *Griffith*, 164 Wn.2d at 965. Any restitution not authorized by statute or supported by substantial evidence must be stricken. *Romish*, 7 Wn. App. 2d at 515.

- b. The State failed to prove a causal connection between the disputed restitution and the charges against Mr. Hernandez-Navarro.
 - i. *The trial court determined it need not find a causal connection because the restitution request came from the Crime Victims Compensation Program.*

The restitution statute directs that, regardless of earlier provisions in this statute, restitution be ordered “when the victim is entitled to benefits under the crime victims’ compensation act.” RCW 9.94A.753(7). If the court fails to order restitution, the Department of Labor and Industries, which administers the CVCP, may seek restitution within one year of the entry of the judgment and sentence. RCW 9.94A.753(7).

The State relied exclusively on subsection (7) to request \$19,254.27 in restitution for funds paid by CVCP following Ms. Clark’s death. CP 61-64, 68-69. Purportedly, \$16,192.24 of this amount was for “pension benefits” and \$3,062.03 was for “time loss.” RP 61-64, 67. The pension benefits were paid to individuals identified as Avery Tilfas and

Ribon Clark, and the compensation for “time loss” was paid to Avery Tilfas. CP 63-64, 67.

The evidence provided by the State did not identify Avery Tilfas’s relationship to Ms. Clark, and indicated only that CVCP had determined Ribon Clark was one of Ms. Clark’s children. CP 62. The evidence did not explain how or why these payments were calculated as a result of Mr. Hernandez-Navarro’s actions, or why Avery Tilfas and Ribon Clark were the recipients of the payments. CP 63-64, 67-69.

When Mr. Hernandez-Navarro objected, the State did not address the deficiencies in its evidence. RP 69-71. Instead, the prosecutor argued CVCP does not “just willy-nilly give out money” and “the statute is clear that when Crimes Victims Compensation requests that money back through restitution they shall get it.” RP 70-71. In other words, according to the State, when the CVCP requests restitution for money it paid out of the victims’ compensation fund, the trial court must order restitution for the amount paid by the CVCP.

The trial court accepted the State’s argument and granted the full amount requested by the CVCP without evaluating whether the State had established by a preponderance of the evidence that the restitution was causally related to the charged crimes. RP 75; CP 96; *Griffith*, 164 Wn.2d at 965.

ii. This Court should accept review because, contrary to the trial court's finding, causation is required under the plain language of the statutes.

The Court of Appeals agreed no finding of causation was required, relying on *State v. McCarthy*, 178 Wn. App. 290, 294, 313 P.3d 1247 (2013), a decision in which one judge dissented. Slip Op. at 3. Before reaching this conclusion, the court did not consider the plain language of the relevant statutes, as discussed by the dissenting judge in *McCarthy* and raised by Mr. Hernandez-Navarro on appeal.

In *McCarthy*, the defendant was charged with felony murder but ultimately pleaded guilty to first degree robbery instead. 178 Wn. App. at 293; CP 93. The trial court awarded restitution for funeral and burial costs for the victims who were killed by Mr. McCarthy's co-defendant, finding it did not need to consider causation because, under RCW 9.94A.753(7), it was obligated to impose restitution in the amount paid by the CVCP regardless of the requirements listed elsewhere in the statute. *Id.* at 293. Two judges affirmed, concluding any compensation paid by the CVCP "under the name of the defendant" required the trial court to impose

restitution without considering whether the losses alleged were caused by the crime of conviction.² *Id.* at 292.

The plain language of the SRA and crime victims' compensation statutes does not support the majority opinion in *McCarthy*. When interpreting a statute, this Court's objective is to determine the legislature's intent. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). Where a statute is plain on its face, "the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002); see also *State v. Conover*, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015). The Court may look no further than the plain language unless it determines the provision at issue is susceptible to more than one reasonable interpretation. *Ervin*, 169 Wn.2d at 820 (citing *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007)). If the plain language is unambiguous, the Court's inquiry ends. *State v. K.L.B.*, 180 Wn.2d 735, 739, 328 P.3d 886 (2014).

Here, the applicable language is unambiguous. First, the restitution statute directs restitution shall be ordered "where the victim is entitled to benefits under the crime victims' compensation program." RCW

² The Court also noted that "[a]lthough the rule often refers to the crime 'charged,' [the Court's] rulings require that the injury or damage be the result of the crime which the defendant is convicted. The initial charges are immaterial." *McCarthy*, 178 Wn. App. at 297 n.3.

9.94A.753(7). Both the SRA and the crime victims' compensation chapter, which is codified under the title, "Special Proceedings and Actions," define "victim." Under the SRA, a victim is "any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged." RCW 9.94A.030(54). Under the crime victims' statute, a "victim" is defined as "a person who suffers bodily injury or death as a proximate result of a criminal act of another person." RCW 7.68.020(16). Importantly, both definitions require causation: the loss claimed by the victim is the result of the specific criminal act of which the defendant was convicted.

The definitions differ in that "victim" under the crime victims' statute only refers to an individual who suffers harm to her person, rather than harm to property, and the statute distinguishes between a "victim" and a "beneficiary" (such as a spouse or child) of the victim. RCW 7.68.020(3). Here, no evidence suggests Avery Tilfas or Ribon Clark received compensation because they were victims in this case as defined by RCW 7.68.020(16). Presumably, these individuals were deemed eligible to receive funds from CVCP as family members or beneficiaries of Ms. Clark. *See* RCW 7.68.070(1) (allowing for compensation of a victim's family member or beneficiary). However, this is merely

speculation, as the individuals' relationship to Ms. Clark was not established at the restitution hearing.³

Under the definition of "victim" in the SRA, a family member or beneficiary could be considered a victim where he or she suffered financial injury "as a direct result of the crime charged." RCW 9.94A.030(54). However, based on the plain language of this definition, the trial court was required to determine the losses incurred by Avery Tilfas and Ribon Clark, for which they had received compensation from CVCP, were a direct result of the crimes to which Mr. Hernandez-Navarro pleaded guilty, in order to find they were "victims" for purposes of RCW 9.94A.753(7). The court could not properly impose restitution against Mr. Hernandez-Navarro under RCW 9.94A.753(7) without making such a finding.

The majority in *McCarthy* ignored the plain language of the statute when it relieved the trial court of its obligation to evaluate causation. RP 73; 178 Wn. App. at 302 (Johanson, A.C.J, dissenting). The dissent considered the plain language of RCW 7.68.120(1), which states:

Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed *the* criminal act in

³ In a footnote, the Court of Appeals looked to other portions of the record to find the relationships between the victim and those receiving benefits had been established. Slip Op. at 4, n. 7. The State did not present evidence to this effect at the restitution hearing.

either a civil or criminal proceeding in which he or she is a party.

McCarthy, 178 Wn. App. at 305 (Johanson, A.C.J. dissenting) (emphasis added in *McCarthy*).

Relying upon the fact the definition of victim in chapter 7.68 RCW⁴ requires causation, the dissent explained:

the plain language of RCW 7.68.120(1) requires that in order for a court to order restitution to the Department under chapter 7.68 RCW, three things must occur: (1) the Department must pay benefits to or on behalf of a “victim” who suffered bodily injury or death as a *proximate result of a criminal act*; (2) the person owing the debt to the Department must be *found to have committed the criminal act*; and (3) the finding must occur in either a criminal or civil proceeding *to which the person owing the debt was a party*.

McCarthy, 178 Wn. App. at 305 (Johanson, A.C.J. dissenting) (emphasis original).

The dissent further explained these findings could be easily made at a restitution hearing, following the conviction for a crime. *Id.* Indeed, of the three findings, the court only really need evaluate “whether the criminal acts the defendant was found to have committed proximately caused the victim’s injuries.” *Id.*

The dissent’s analysis in *McCarthy* is consistent with the application of RCW 9.94A.753(7) in *State v. Gonce*, 200 Wn. App. 847,

⁴ The dissent cites to RCW 7.68.020(15), which is the definition of “victim” now codified at RCW 7.68.020(16). *See* Laws of 2017, ch. 235, § 1.

857, 403 P.3d 918 (2017), and *State v. Osbourne*, 140 Wn. App. 38, 42, 163 P.3d 799 (2007). In *Gonce*, the court explained that before ordering the restitution amount requested by the Department of Labor and Industries, “the court must find a causal connection between the defendant’s crime and the injury.” 200 at 857. In *Osbourne*, the court reversed an order of restitution after finding the amount sought by the Department of Labor and Industries was not for injuries causally related to the defendant’s crimes. 140 Wn. App. at 42.

In addition, causation must be proved by the State in order to avoid constitutional concerns. Pursuant to the constitutional-doubt canon, statutes must be interpreted to avoid constitutional doubts when statutory language reasonably permits. *Utter v. Bldg. Indus. Ass’n of Washington*, 182 Wn.2d 398, 434, 341 P.3d 953 (2015); *Gomez v. United States*, 490 U.S. 858, 864, 109 S. Ct. 2237, 104 L. Ed. 2d 923 (1989). As Mr. Hernandez-Navarro explained at the restitution hearing, deferring to the CVCP’s determination of causation violates due process and the separation of powers. RP 74; CP 94.

Defense counsel described how the CVCP’s determination became “untouchable” under the court’s reasoning. RP 74. Even assuming CVCP had the “best intentions of the world,” just like many government agencies do, errors could be made and there was no method for defense to check the

CVCP's work if the State was not held to its burden at the restitution hearing. RP 74.

The trial court did not acknowledge this argument, and the Court of Appeals chose not to address it because it determined the casual connection was sufficiently established by the "record" (though not necessarily at the restitution hearing). Slip Op. at 6, 4, n.7. The courts below were wrong to disregard Mr. Hernandez-Navarro's due process concerns. RP 75. Evidence presented at a restitution hearing must satisfy due process requirements, which includes the defendant's right to refute the evidence presented. *Kisor*, 68 Wn. App. at 620. That fundamental right is violated where the trial court defers to the executive branch's determination of causation for purposes of entering a restitution order against a criminal defendant, rather than reaching its own determination at the hearing.

In addition, such deference to the executive branch for a uniquely judicial function violates the separation of powers. This doctrine, considered a vital part of the division of our government into the executive, legislative, and judicial branches, requires that the fundamental function of each branch remain inviolate. *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994); U.S. Const. arts. I, II, III; Const. arts. II, III, IV. One branch's activities may not threaten the independence,

integrity, or prerogative of another branch. *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009) (citing *Carrick*, 125 Wn.2d at 135).

Permitting the CVCP to determine what restitution is ordered in a criminal case, and incorporated into a criminal judgment and sentence, would threaten the independence, integrity, and prerogative of the judicial branch.

These constitutional concerns are easily avoided, however, because the plain language of the SRA and the crime victims' statute demonstrates the legislature did not intend for the trial court to abrogate its duty to determine whether the loss alleged was causally connected to the crime of conviction. The trial court erred when it failed to consider causation and simply deferred to the CVCP's determination. RP 75, 77, CP 96. This Court should grant review.

- c. This Court should grant review because the "pension benefits" do not qualify as lost property or wages, are not easily ascertainable, and are unsupported by substantial evidence.

The SRA also requires any restitution ordered "be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment to injury to persons, and lost wages resulting from injury." RCW 9.94A.753(3). This subsection of the statute specifically exempts subsection (6) from this requirement (when the conviction is for child rape) but not the subsection related to restitution requested by

CVCP. RCW 9.94A.753(3); *see also Gonce*, 200 Wn. App. at 859 (finding lost wages paid by the Department of Labor and Industries were “easily ascertainable” under the statute).

According to the court’s order, \$16,192.24 of the restitution entered was for “pension benefits” paid by CVCP. CP 96. The documentation provided by the CVCP indicates these pension benefits are a “monthly wage replacement benefit” but does not explain whose wages they replaced or how the benefit was calculated. CP 61. It states only that the maximum “claim benefit” is \$40,000 and the benefits will continue until this maximum is reached. CP 62.

In addition, the documentation presented by the State is confusing and inconsistent. It states four children are eligible for the pension benefit, but then shows only two individuals receiving the benefit, one of whom is *not* identified as Ms. Clark’s child. CP 62-64.

The Court of Appeals has held child support judgments previously ordered against the decedent are “easily ascertainable” but the decedent’s future earnings are not. In *State v. Cosgaya-Alvarez*, the court determined a child support order was properly imposed as restitution because it had been previously ordered by a court and was therefore easily ascertainable. 172 Wn. App. 785, 794, 291 P.3d 939 (2013). In *State v. Lewis*, the court held the analysis required to determine future earnings was complex,

typically subject to expert testimony in civil actions, and not appropriate for an already overburdened criminal docket. 57 Wn. App. 921, 924, 791 P.2d 250 (1990). The court held it was therefore not easily ascertainable. *Id.*

In addition, the Court of Appeals found the loss of child support payments constituted a loss of property in *Cosgaya-Alvarez*, whereas the loss of future earnings in *Lewis* did not. *Cosgaya-Alvarez*, 172 Wn. App. at 793; *Lewis*, 57 Wn. App. at 926. In *Lewis*, the Court explained this is because the restitution statute is focused on the past and expenses already incurred. 57 Wn. App. at 926. Damages estimating what might occur in the future were better left to civil litigation. *Id.*

Based upon the limited evidence provided by the State, “pension benefits” appear to be more akin to the loss of future earnings, as opposed to a judgment for child support imposed when the decedent was still alive. However, because the State chose only to present documentation of the payments made by the CVCP, it was not possible for the trial court to make this determination, and the trial court did not attempt to do so because it wrongly concluded it was required to enter an order reflecting whatever amount the CVCP requested. RP 75, 77; CP 63-64. This Court should grant review because the “pension benefits” do not constitute lost

property or wages, are not easily ascertainable, and are unsupported by substantial evidence.

- d. This Court should grant review because the State's request for restitution for "time loss" was not supported by substantial evidence.

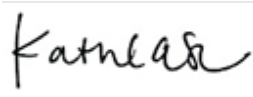
Finally, substantial evidence does not support the CVCP's request for \$3,062.03 in "time loss." The documentation provided by the State does not explain when this "time loss" occurred or why, and the additional documents provided by the State suggest the entitlement for lost wages is actually \$2,136.31 or \$1852.77. CP 67-69. Evidence of the CVCP's payment of \$3,062.03 is not sufficient, alone, to satisfy the State's burden. The Court should also grant review for this reason.

E. CONCLUSION

The trial court exceeded its statutory authority when it deferred to the CVCP's determination and ordered restitution not shown to be causally connected Mr. Hernandez-Navarro's criminal acts. The restitution is also void because the "pension benefits" were not easily ascertainable and did not qualify as restitution under the statute, and both the "pension benefits" and the "time loss" were unsupported by substantial evidence. For all of these reasons, this Court should grant review.

DATED this 10th day of February, 2020.

Respectfully submitted,



Kathleen A. Shea – WSBA 42634
Luminata, PLLC
2033 Sixth Avenue, Suite 901
Seattle, WA 98121
(206) 552-9234
kate@luminatalaw.com

s/ Gregory C. Link
Gregory C. Link – WSBA 25228
Washington Appellate Project – 91052
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
greg@washapp.org

APPENDIX

COURT OF APPEALS, DIVISION ONE OPINION

January 13, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 78839-6-I
)	
Respondent,)	DIVISION ONE
)	
v.)	UNPUBLISHED OPINION
)	
ERIC RAUL HERNANDEZ-NAVARRO,)	
)	
Appellant.)	
<hr/>		FILED: January 13, 2020

HAZELRIGG-HERNANDEZ, J. — Eric Hernandez-Navarro pleaded guilty to multiple crimes. On appeal, he contends portions of the trial court’s restitution order are not supported by authority or sufficient evidence. We disagree and affirm.

FACTS

In February 2017, Hernandez-Navarro raced a stolen car through a red light in Kent and hit another vehicle. The collision killed Leimoi Clark and injured the driver, Clark’s husband Avery Tilfas, and child passenger, E.L.T.¹ Hernandez-Navarro pleaded guilty to vehicular homicide and vehicular assault, among other felonies not relevant to this appeal, and agreed to pay restitution.

At a post-sentencing hearing, the State sought restitution in the amount of \$19,254.27.² The State submitted a letter from the crime victims’ compensation program

¹ The record indicates that the child’s full name is E.L.T.

² While the State also sought restitution for burial costs and vehicle damage, we do not address them because Hernandez-Navarro is not challenging those amounts on appeal.

informing Tilfas that R.C., E.L.T., K.T., and I.T., as Clark's surviving children, were "eligible to receive a monthly wage replacement benefit"—including an initial payment of \$713.02 per child, followed by payments of \$277.92 per child per month—until "the children turn 18, or until the maximum \$40,000.00 benefit is reached." This letter enclosed a ledger outlining monthly payments to Tilfas and R.C. totaling \$16,192.24 in benefits.³ The State also submitted a letter showing that the crime victims' compensation program made two "time loss" payments to Tilfas totaling \$3,062.03.⁴

Hernandez-Navarro objected to the State's restitution request. He argued that Clark's children, who were not injured in the collision, were not eligible for any benefits from the crime victims' compensation program and, therefore, the State failed to establish a sufficient nexus to his crimes. He also argued that the monthly pension benefits and time loss payments were not supported by substantial evidence.

The trial court ordered the full amount of requested restitution pursuant to RCW 9.94A.753(7). Hernandez-Navarro timely appealed.

ANALYSIS

Hernandez-Navarro contends that portions of the trial court's restitution order lack authority and are not supported by substantial evidence. We will not disturb the trial court's entry of a restitution order on appeal absent an abuse of discretion. State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). A trial court abuses its discretion

³ According to the ledger, other than the one-time payment, each month the crime victims' compensation program made four separate payments of \$277.92 including one payable to R.C. and three payable to Tilfas.

⁴ The crime victims' compensation program paid Tilfas \$1,210.57 for time loss between February 12, 2017 and February 28, 2017, and paid him \$1,851.46 for time loss between March 1, 2017 and March 26, 2017.

when it applies an incorrect legal standard or erroneous view of the law, even if the court's decision is reasonable. State v. Tobin, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007).

I. Statutory Authority

First, Hernandez-Navarro argues that the trial court lacked authority to order restitution because it failed to find a causal connection between the benefits paid by the crime victims' compensation program and his crimes. We disagree.

The court's authority to order restitution derives entirely from statute. Id. "Regardless of the provisions of subsections (1) through (6) of [RCW 9.94A.753], the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act." RCW 9.94A.753(7) (emphasis added). If the court fails to order restitution in this situation, the department that administers the crime victims' compensation program may petition the court for entry of the order. Id. When restitution is imposed under RCW 9.94A.753(7), as was the case here, the court is not required to make a causal connection determination. State v. McCarthy, 178 Wn. App. 290, 300-01, 313 P.3d 1247 (2013). Thus, the court did not err by ordering Hernandez-Navarro to pay restitution absent entry of causal connection findings.⁵

Next, Hernandez-Navarro argues that the court's restitution order lacks authority because Tilfas and Clark's children were not "victims" entitled to benefits from the crime victims' compensation program. We reject this argument. The crime victims' compensation act established a program to provide benefits to innocent victims of criminal

⁵ Hernandez-Navarro relies on State v. Osborne, 140 Wn. App. 38, 163 P.3d 799 (2007), and State v. Gonce, 200 Wn. App. 847, 403 P.3d 918 (2017), for the proposition that the trial court must make its own causal connection determination to impose restitution. His reliance is misplaced. This is so because neither case involves restitution based on payments by the crime victims' compensation program. Osborne, 140 Wn. App. at 42; Gonce, 200 Wn. App. at 857-58.

acts. RCW 7.68.030(1). Under this act, a “victim” includes “a person who suffers bodily injury or death as a proximate result of a criminal act of another person.” RCW 7.68.020(16). Victims of a “criminal act,”⁶ as well as “the victim’s family or beneficiary in case of death of the victim,” are eligible for benefits.” RCW 7.68.070(1) (emphasis added).

Here, because Clark, Tilfas, and E.L.T. were injured as a result of Hernandez-Navarro’s criminal act, they are victims eligible for benefits from the crime victims’ compensation program. Moreover, because Clark was killed in the collision, her three other children are also eligible to receive benefits. Id. Because Tilfas and the children were benefits-eligible, the court acted with proper authority and did not err.⁷

II. Substantial Evidence

Hernandez-Navarro contends that the State did not support its restitution request for monthly pension benefits and time loss payments with substantial evidence. We disagree. The State has the burden of proving the amount of restitution by a preponderance of the evidence. State v. Deskins, 180 Wn.2d 68, 82, 322 P.3d 780 (2014). The amount of restitution must be based on “easily ascertainable damages” and supported by substantial evidence. RCW 9.94A.753(3); Deskins, 180 Wn.2d at 82. Evidence is sufficient if it provides a reasonable basis for estimating the loss and does not require the court to engage in speculation or conjecture. Deskins, 180 Wn.2d at 82-83.

⁶ The term “criminal act” includes an injury or death caused by a driver in violation of either RCW 46.61.520 (vehicular homicide) or RCW 46.61.522 (vehicular assault). RCW 7.68.020(6)(i)(C).

⁷ Hernandez-Navarro also argues that Clark’s family members are not entitled to benefits under RCW 7.68.070(1) because “the individuals’ relationship to Ms. Clark was not established at the restitution hearing.” The key flaw in Hernandez-Navarro’s argument is that, at the restitution hearing, he acknowledged Clark’s “four children” as R.C., E.L.T., K.T., and I.T. Tilfas was identified, as both Clark’s husband and the driver of the vehicle struck by Hernandez-Navarro (in the charging documents). The identification of Clark’s family members is clear on this record.

Here, the State submitted letters and a ledger showing that the crime victims' compensation program paid specific amounts of wage replacement pensions to each of Clark's children per month, and will continue to do so until the child ages out or the maximum claim benefit of \$40,000.00 is reached.⁸ See RCW 7.68.070(1)(b). The State also submitted a ledger showing the crime victims' compensation program paying Tilfas for "time loss" for several weeks in February and March 2017 immediately following the death of his spouse and serious injury of a child. This documentation provided "easily ascertainable damages" for the amount of benefits the crime victims' compensation program paid Clark's children and Tilfas as required by RCW 9.94A.753(3).

Hernandez-Navarro points to State v. Lewis, and State v. Cosgaya-Alvarez, for the proposition that lost wages cannot be compensated in a restitution order because they are not easily ascertainable. 57 Wn. App. 921, 791 P.2d 250 (1990); 172 Wn. App. 785, 291 P.3d 939 (2013). But Lewis and Cosgaya-Alvarez are distinguishable because neither case considered restitution of lost wages paid by the crime victims' compensation program, as was the case here. 57 Wn. App. at 924; 172 Wn. App. at 790. We hold that the evidence was sufficient for the trial court in the exercise of its discretion to order Hernandez-Navarro to pay restitution for the amounts requested.

III. Constitutional Challenges

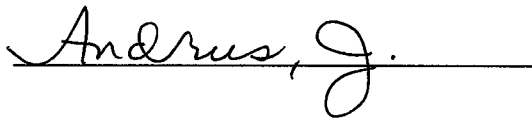
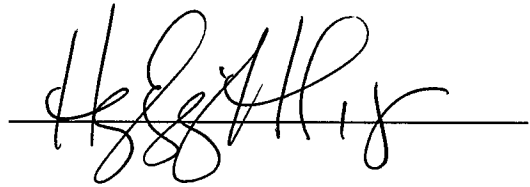
Finally, Hernandez-Navarro argues that basic principles of due process require the State to prove a causal connection between the crime of which he was convicted and the restitution ordered. He contends there can be no automatic statutory presumption that

⁸ Although the crime victims' compensation program identified four children and indicate each child was eligible for a monthly benefit payment, it appears such benefits were made payable to only one of the children and the children's father. This fact, alone, is inconsequential and does not warrant reversal.

any payment the crime victims' compensation program makes is causally connected to the crime. But we need not reach the issue of whether the statute imposes such an automatic presumption or whether such a presumption is constitutional because the record here clearly establishes that causal connection.

Affirmed.

WE CONCUR:



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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 78839-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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[PAOAppellateUnitMail@kingcounty.gov]
[carla.carlstrom@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit
- petitioner
- Lindsay Jensen
Office of the Attorney General
Seattle Labor and Industries Office
[Lindsay.Jensen@atg.wa.gov][lniseaeservice@atg.wa.gov]



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: February 10, 2020

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